

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re: Bard IVC Filters)	MD-15-02641-PHX-DGC
Products Liability Litigation)	
)	Phoenix, Arizona
)	May 23, 2018
)	
Doris Jones, an individual,)	
)	
Plaintiff,)	
)	CV-16-00782-PHX-DGC
v.)	
)	
C.R. Bard, Inc., a New Jersey)	
corporation; and Bard Peripheral)	
Vascular, Inc., an Arizona)	
corporation,)	
)	
Defendants.)	

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 6 - A.M. SESSION

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P R O C E E D I N G S

(Proceedings resumed in open court outside the presence of the jury.)

THE COURT: Thank you. Please be seated.

Morning, everybody.

EVERYBODY: Morning, Your Honor.

THE COURT: I'm going to start with defense counsel today in light of the comment you made yesterday, Ms. Helm, that you never have enough time. We'll let plaintiffs go second.

MR. CLARK: I was going to suggest the same thing.

MS. HELM: Thank you, Your Honor.

I need to correct -- the first thing I need to do is correct a statement I made yesterday. I stated that Mr. O'Connor stated in opening statement that the case was about pain and suffering. And I had the day right but I had the event wrong. He actually stated, and I just did a word search, at least 14 times during jury selection that this case was about pain and suffering and asked jurors questions like, And if there are claims of pain and suffering in this case.

And so he questioned the entire jury panel, including the jurors that are impaneled and sworn in, about pain and suffering. And so the panel -- my argument is the

08:32:16 1 same. The jurors believe this case is about pain and
2 suffering, and we should be entitled to put in evidence of
3 other sources of pain and suffering.

08:32:29 4 And, again, I'm going to reiterate as to worry, we
5 should be able to put in evidence through Ms. Jones of other
6 sources of worry. She testified yesterday that she's worried
7 something's going to happen with her grandchildren, while
8 she's with her grandchildren. And we believe that the effect
9 of smoking particularly and what it could do to her is
08:32:45 10 something that we should be able to cross-examine her about
11 and ask her whether she worries about the impact of her
12 smoking on her health and her ability to care for her
13 grandchildren.

14 THE COURT: Okay. I understand that.

08:32:55 15 Do you have other matters to raise?

16 MR. NORTH: No.

17 MS. HELM: Other than we would appreciate if the
18 plaintiffs would tell us what they're actually claiming in the
19 case.

08:33:08 20 THE COURT: Right. We're going to nail that down.

21 How about other matters besides that? Does
22 plaintiff have any matters to raise?

23 MR. CLARK: We have a couple of brief matters.

24 THE COURT: Go ahead.

08:33:15 25 MR. CLARK: Would you like me to proceed?

08:33:17 1 THE COURT: Yes.

2 MR. CLARK: Your Honor, one issue relates to the
3 deposition of Daniel Orms that we will play today. There
4 is -- the transcript is agreed to, we resolved your order as
08:33:31 5 far as the objections. But part of the testimony that is
6 agreed to deals with Exhibit 4514, which is an October 8,
7 2010, monthly management report. We think this is directly
8 relevant to Mr. Orms' testimony. He is a contributing author
9 to the report based upon his testimony. It also has a number
08:33:54 10 of -- some language in there that he was examined upon as far
11 as opening doors and the idea what the Eclipse filter would do
12 for the company.

13 So we would move, obviously in front of the jury,
14 for that to be admitted, but would like that to be subject to
08:34:08 15 whatever limitations Your Honor will place on us for the
16 other monthly management reports.

17 So that would be issue number one, if you want to
18 take them one at a time.

19 THE COURT: Let's take them one at a time.

08:34:17 20 MR. NORTH: Your Honor, we just believe they should
21 be subject to those limitations. That can be worked out.

22 I would also note there is a 401, 402 objection,
23 too. Many parts of it have to do with other products, sales,
24 stents, things of that nature, which we think that should be
08:34:34 25 redacted out of that in all of them.

08:34:37 1 THE COURT: Well, I assume that's part of what you're
2 going to work out, is those relevancy issues.

3 MR. NORTH: Yeah.

4 THE COURT: So you have no objection to my admitting
08:34:44 5 it subject to resolving the other relevancy arguments?

6 MR. NORTH: Right, no objection.

7 THE COURT: Okay. So go ahead and move it in. I'll
8 admit it subject to that understanding.

9 MR. CLARK: Your Honor, the other housekeeping issue
08:34:55 10 is your order from Saturday indicated that the 1006 summary
11 can be admitted and we have to work out the redactions. We
12 will propose Exhibit 4565, which was part of your order, be
13 substituted for whatever product we reach agreement with the
14 parties.

08:35:11 15 So I just want the record to be clear that that will
16 be 4565.

17 THE COURT: That was the big one; right?

18 MR. CLARK: Yes.

19 THE COURT: Yeah, we'll come up with a new 4565.

08:35:20 20 MR. CLARK: Then, Your Honor, I think we have a
21 number of other monthly management reports that we will be
22 offering in our case and, again, it would be subject to
23 whatever limitation.

24 We'll pick a time that's convenient for the jury to
08:35:33 25 make that motion. And if the Court wants to consider it,

08:35:35 1 perhaps you can defer ruling on it or something like that,
2 but we just want to offer those into evidence before we rest
3 in our case, along with a couple of other documents that I'm
4 consulting Ms. Helm on.

08:35:45 5 THE COURT: Well, on those exhibits, is there -- what
6 is the defense response to the other monthly management
7 reports? Are you of the view those can come in subject to the
8 same sort of relevancy redactions?

9 MR. NORTH: Yes, Your Honor. Our only two issues are
08:35:58 10 the relevancy and then the adverse event compilations at the
11 back of them being subject to whatever limitations.

12 THE COURT: Well, so, are you moving, then, in for
13 issues other than the adverse event compilations at the back
14 of them, Mr. Clark?

08:36:15 15 MR. CLARK: Yes. There are a couple things I think
16 we can work it out with counsel as far as other things that
17 are -- there's some language in the reports that we would want
18 to highlight. We may or may not have a disagreement about
19 certain other redactions as it relates to financial
08:36:28 20 information. We agree that all the other product information
21 should be out of there. But I think there's been argument
22 about this is a small part of Bard's business and we think it
23 may be that showing the overall portion of the business that
24 relates to filters could be relevant. We need to evaluate
08:36:43 25 that. But I think subject to us working that out, that

08:36:46 1 shouldn't be a problem.

2 THE COURT: It seems, then, that the monthly
3 management reports should come in subject to two caveats: One
4 is working out the relevancy objections the defendants have,
08:36:55 5 and the second is the question we talked about yesterday, and
6 that is whether the adverse event attachments should come in,
7 in addition to what's going to be in the new 4565.

8 MR. CLARK: Right. And then these would be bundled
9 with whatever your decision is on that.

08:37:09 10 THE COURT: Okay. So we'll reserve both of those
11 issues to be resolved. But go ahead and admit the reports for
12 the other purposes.

13 MR. CLARK: That's correct, Your Honor.

14 THE COURT: Okay.

08:37:19 15 Let's talk about plaintiff's damage claim, then. I
16 think I asked last night for you all to specify exactly what
17 you're claiming for damages.

18 Mr. O'Connor?

19 MR. O'CONNOR: Thank you, Your Honor.

08:37:32 20 So we went back and we looked at this. And here are
21 our claims: Pain and suffering damages. Any claims of pain
22 and suffering relate to the April 21, April 22, 2015,
23 hospitalization. Dr. Hurst testified that he believes the
24 radiating pain down her arms is related to the filter. And I
08:37:56 25 don't think there's any question, based upon Hurst and

08:38:00 1 Muehrcke, that the procedure to remove the filter, of course,
2 would be painful and leave a patient with pain and suffering.

3 Our claim for emotional distress suffering is
4 limited to Doris' suffering, mental suffering and emotional
08:38:19 5 suffering, from having a foreign object in her pulmonary
6 artery.

7 Our claim for permanent damages is simply the fact
8 that there is a strut that is in her pulmonary artery.

9 We made a claim for medical expenses. They were
08:38:33 10 21,000 something, I don't have the exact amount, but that
11 came in yesterday.

12 And then today we are going to put on a claim for a
13 future damage for either a percutaneous procedure in the
14 amount of \$130,157 or -- 130,000, excuse me, or an open
08:38:54 15 procedure, \$244,961.

16 We are not bringing down our economist since we are
17 not going to make a claim and not have any testimony about
18 the lifelong need for anticoagulation.

19 So we are just talking about a very finite set of
08:39:14 20 medical expenses, past and future, pain and suffering from
21 the date she went into the hospital and then had her filter
22 removed.

23 Emotional suffering from having that piece in her
24 pulmonary artery.

08:39:32 25 And, again, the medical expenses, past and future.

08:39:36 1 THE COURT: When you said a moment ago pain and
2 suffering from the date she went into the hospital, you mean
3 from then on or do you mean just during the April 2015
4 hospitalization?

08:39:49 5 MR. O'CONNOR: She -- I believe it will be limited to
6 the radiating pain and any pain and suffering she had having
7 the removal of the filter.

8 THE COURT: So just during her hospitalization?

9 MR. O'CONNOR: For the physical pain and suffering.

08:40:18 10 THE COURT: The emotional distress damages, you say,
11 will be limited to suffering from having the strut in her
12 lung. Tell me what evidence you'll argue to the jury supports
13 an award of damages for that kind of suffering. That is,
14 filter fragment mental suffering.

08:40:43 15 MR. O'CONNOR: Well, I think there is an instruction
16 on mental suffering.

17 THE COURT: There's a broader one. But my question
18 is, what is in evidence that you are going to say to the jury
19 shows she suffers mental suffering because of the strut in her
08:41:00 20 lung?

21 MR. O'CONNOR: She testified yesterday she worries
22 what happens if that strut moves or causes any of the problems
23 that people like Dr. Muehrcke or Dr. Hurst talked about,
24 perforating, any other damage it could cause. The fact that
08:41:13 25 it's in there causes her distress each and every day and when

08:41:16 1 she takes care of the grandchildren.

2 THE COURT: And how is that -- well, let me ask this
3 question differently. You also said permanent damages for
4 having the strut in her lung.

08:41:35 5 MR. O'CONNOR: Right.

6 THE COURT: How is the permanent damage for having
7 the strut in her lung different from the mental suffering for
8 having it in there and the cost of having it removed?

9 MR. O'CONNOR: I think it just goes to a permanency
08:41:50 10 instruction. In other words, I don't think there's any
11 question based on the testimony that having a foreign object
12 embedded in an artery that's in a circulatory system is an
13 injury. I don't think there can be any dispute about that.
14 And it's in there. And until it's removed it will be in there
08:42:06 15 permanently. If it's removed --

16 THE COURT: I thought you were asking them, the jury,
17 to award money to have it removed.

18 MR. O'CONNOR: Pardon me?

19 THE COURT: You're asking the jury to give her money
08:42:16 20 to have it removed.

21 MR. O'CONNOR: There is testimony it can be removed,
22 if it can be removed. I mean, that's still an issue, I think,
23 that everybody agrees. I mean, she can go to a doctor to have
24 it removed.

08:42:26 25 But I would agree to you that if she had it removed

08:42:29 1 and that there were no complications from the procedure, and
2 we don't have testimony about any complications that could
3 occur from the procedure, then that would end the permanency.

08:42:41 4 THE COURT: Okay. Let me ask the question one more
5 way, then. Let's assume the jury gives her mental suffering
6 damages up to the point where they pay for it to be removed,
7 and then they pay for it to be removed. What other permanent
8 damages are there from having a strut in her lung? She's got
9 the mental suffering up to the point where it's removed and
08:43:00 10 she's been given money to have it removed. I'm having trouble
11 seeing what other category of permanent damages there are.

12 MR. O'CONNOR: Well, you know, I think that's the
13 issue with mental suffering damages. Nobody can predict. But
14 I would agree that if this jury decides that she is entitled
08:43:20 15 to recover for future expense to have it removed, and if they
16 determine that they believe, based upon the testimony, that
17 removal would be successful, then they could also determine
18 that, as they deliberate on what the damages are, that her
19 mental suffering would end there.

08:43:39 20 But I think it's going to be up to them to evaluate
21 the testimony. But certainly there's not going to be an
22 argument that she will continue to suffer beyond having a
23 filter removal, if that happened. I think the bigger issue
24 is this, is that she is placed in a difficult position. Does
08:44:00 25 she leave it or does she have it out? And as we heard

08:44:03 1 yesterday, she's concerned about that, too, because this is
2 not a simple procedure that we're talking about. It's a
3 procedure that goes through a person's heart, and I think
4 that would cause anybody mental suffering and concern and
08:44:16 5 fear. And I think that is something that a jury can
6 certainly consider and evaluate based upon their collective
7 mind.

8 THE COURT: Okay. All right. Thanks.

9 Comments from defense counsel?

08:44:30 10 MS. HELM: Again, Your Honor, the fact that they're
11 seeking this emotional -- this worry, and the fact they're
12 seeking permanent damages should allow us to put in evidence
13 of other potential sources of worry that she has based on her
14 lifestyle.

08:44:48 15 I mean, I've got her preexisting medical conditions,
16 which I believe are fair game and are going to come in. But
17 this jury's going to hear that Ms. Jones is worried only
18 because of her filter. And they don't know that there are
19 other lifestyle choices that she's made that should be a
08:45:06 20 source of worry for her, that are commonly known as a source
21 of worry, and it could impact her ability to take care of her
22 grandchildren.

23 So we intend to go into her preexisting conditions
24 as it relates to worry. We believe the plaintiffs have made
08:45:22 25 that an issue in the case. But I also think that we should

08:45:26 1 be allowed to address her smoking as it goes to her worry
2 claim because it's a prominent health hazard that has been --
3 she's been counseled about for many, many, many years and, as
4 you noted in your ruling, it is well-known that it has an
08:45:44 5 impact on people's health.

6 THE COURT: What preexisting conditions are you
7 referring to?

8 MS. HELM: Your Honor, she has -- well, her anemia.

9 THE COURT: Right.

08:45:55 10 MS. HELM: She has the preexisting GI bleeds, the
11 bleeding ulcers. She has prior episodes of fainting. And all
12 events that could impact her ability to take care of her
13 grandchildren.

14 THE COURT: Well, that's a pretty broad statement at
08:46:10 15 the end.

16 MS. HELM: Well, I mean --

17 THE COURT: What beyond fainting?

18 MS. HELM: Pardon me?

19 THE COURT: What beyond fainting?

08:46:15 20 MS. HELM: Her dizziness, her fainting, and her
21 pretty significant GI bleeds are the ones that I plan to
22 address, including a very significant GI bleed that occurred
23 after the filter was removed.

24 THE COURT: The --

08:46:33 25 MS. HELM: So that is a post existing condition.

08:46:36 1 THE COURT: All right. The only evidence, it sounds
2 to me like you're asking me to permit is smoking.

3 MS. HELM: Yes, Your Honor.

4 And I believe the other issues, we'll have to
08:46:56 5 address during the charge conference.

6 THE COURT: I think I want to hold off on the smoking
7 issue until after we settle the jury instructions on Friday.
8 I'm not persuaded at this point that the door has been opened
9 to smoking. And I want to think about that in the context of
08:47:26 10 how we finalize the damages instruction that will come in.

11 If I decide that you can go into it, I'll permit you
12 to call her during your case next week to bring in the fact
13 of smoking. So don't go into it today because at this point
14 I'm not persuaded that that door is opened. And I don't know
08:47:42 15 that I will be, but I want to make that decision after we
16 settle the instructions.

17 But to avoid issues later today, do the plaintiffs
18 have any disagreement with the list of preexisting
19 conditions -- anemia, GI bleeds, fainting/dizziness -- that
08:47:58 20 the defense intends to bring out in cross today?

21 MR. O'CONNOR: No, Your Honor. I mean, they can ask
22 her about that.

23 THE COURT: Okay.

24 MS. HELM: And, Your Honor -- I apologize,
08:48:13 25 Your Honor, I forgot --

08:48:15 1 THE COURT: Before you speak, so what we'll do, then,
2 is we'll -- you can cover those preexisting conditions, we're
3 going to leave smoking off the table for now.

08:48:24 4 One of the things we'll need to have -- think about
5 for Friday, and I would encourage you all to give this some
6 thought with respect to instruction number 19, that's the
7 compensatory damages instruction, is how we refine the list
8 of factors that can be considered to match what the plaintiff
9 is limiting damages to. Because that list of factors now is
08:48:43 10 very broad. And it seems to me if we're going to limit
11 damages the way we've described today, we need to refine
12 that.

13 So give that some thought, if you would, before
14 Friday, and then I'll make a final decision on the smoking
08:48:57 15 issue after plaintiff has rested and we settle those
16 instructions.

17 Were you going to say something, Mr. O'Connor?

18 MR. O'CONNOR: Well, I think I understand. You know,
19 I think there's going to be a fine line from making
08:49:10 20 instructions into comments on the evidence. I think the jury
21 should be allowed to -- in their delivery, based upon the
22 evidence they've heard, and then apply it and --

23 THE COURT: Well, but that's --

24 MR. O'CONNOR: -- so the arguments are made outside
08:49:24 25 of that.

08:49:24 1 THE COURT: And that's what we'll talk about on
2 Friday.

3 MR. O'CONNOR: All right.

4 THE COURT: But, for example, if you're limiting pain
08:49:28 5 and suffering to her hospitalization in April 2015, it seems
6 to me the instructions should say pain and suffering for the
7 hospitalization in April 2015. Because you're not claiming
8 anything beyond that. So that's a factor they can consider.

9 So give that some thought. I won't settle that now,
08:49:47 10 but that is what I'd like to pin down on Friday afternoon.

11 MR. O'CONNOR: Thank you.

12 THE COURT: Did you have something else, Ms. Helm?

13 MS. HELM: Yes, Your Honor. I forgot a preexisting
14 condition. In Exhibit 4406, which the plaintiffs admitted
08:49:58 15 into evidence yesterday, there's also indication of Ms. Jones'
16 hypertension or high blood pressure, and I intend to ask her
17 about that.

18 THE COURT: I think that was in the exhibit, as I
19 recall.

08:50:13 20 Any issue with that from the plaintiff's side?

21 MR. O'CONNOR: Well, wait a minute. I thought that
22 hypertension was supposed to be redacted.

23 MR. CLARK: It was, Your Honor. In light of the
24 Court's ruling on the motion in limine relating to
08:50:24 25 hypertension, that exhibit should have been redacted.

08:50:27 1 THE COURT: I don't think it was when it came in. I
2 think I saw it on the screen.

3 MS. HELM: Correct, Your Honor.

4 THE COURT: I think I did in the motion in limine say
08:50:36 5 it was out because defendants hadn't identified a reason it
6 should be in.

7 MR. CLARK: Your Honor, my recollection, and I'm not
8 representing that this happened, but my recollection is that
9 is a document that came in that I think we were responding to
08:50:48 10 their cross-examination. If it was -- came in without
11 redaction --

12 THE COURT: Cross-examination of whom?

13 MR. O'CONNOR: I think it was Dr. Hurst.

14 THE COURT: What's the exhibit number?

08:50:59 15 MS. HELM: Your Honor, it's exhibit 4406, and it was
16 in the long list of exhibits that Mr. Clark tendered at the
17 beginning of the day yesterday.

18 THE COURT: Let me pin that down. I can tell you
19 exactly when we addressed it.

08:51:53 20 It was in the long list of documents, Mr. Clark, you
21 proposed at the beginning of yesterday.

22 MR. CLARK: It may very well be, Your Honor. We have
23 had a pretty good working relationship of exhibits that need
24 redacting can be redacted, and if that was not mentioned as
08:52:10 25 one of them, I apologize, but we would like to redact

08:52:12 1 hypertension in light of the Court's motion in limine. That
2 should have been identified as something that needed redacted.

3 THE COURT: My memory, Ms. Helm, is that there was no
4 mention of it in the testimony.

08:52:27 5 Is that your understanding as well?

6 MR. ROGERS: Your Honor, I believe, and I may be
7 mistaken, that when I did introduce it into evidence and
8 displayed it, that Dr. Hurst commented on it when I was asking
9 about what she had presented for. I did not ask a question
08:52:43 10 about that, but I think he brought it up himself.

11 THE COURT: Well, what I show in my notes, and
12 they're certainly not as complete as the transcript, is that
13 you presented it as the discharge summary and you had the
14 doctor look at the diagnosis, which was a foreign body
08:53:16 15 embolism, and you brought out the fact that the cause of the
16 bilateral arm pain in the diagnosis was iron deficiency. And
17 then you moved on to the IFU.

18 I did, in my pretrial ruling --

19 Confirm this, Jeff --

08:53:36 20 -- say hypertension was out, so I'm going to allow
21 that to be redacted from document or Exhibit 4406, and we
22 should not include that in the list of preexisting
23 conditions.

24 Okay. Are there other matters we need to take up
08:53:53 25 before we get started this morning?

08:53:55 1 MR. CLARK: Not for the plaintiff.

2 MR. NORTH: Not for the defendant.

3 THE COURT: Did you finish with Ms. Jones yesterday,

4 Mr. O'Connor?

08:54:01 5 MR. O'CONNOR: Yes. We finished. And I think she's

6 going to be back down for cross-examination.

7 THE COURT: So we start with cross.

8 Okay. I'll come in in five minutes when the jury's

9 in.

08:55:25 10 (Recess taken from 8:55 to 9:00. Proceedings resumed in

11 open court with the jury present.)

12 THE COURT: Morning, ladies and gentlemen.

13 JURORS: Morning, Your Honor.

14 THE COURT: Thank you for being with us this morning.

09:01:31 15 We are going to begin this morning with the

16 cross-examination of Ms -- Mrs. Jones.

17 Ms. Helm, you may proceed.

18 MS. HELM: Thank you, Your Honor.

19 Your Honor, before I proceed, the parties have

09:01:45 20 reached an agreement to admit Exhibits 8048, 7958, 805- --

21 THE COURT: Hold on just a minute, Ms. Helm. I've

22 got to get to the right place in my notes.

23 Could you start over.

24 MS. HELM: Yes, Your Honor. 8048, 7958, 8054, 8057,

09:02:14 25 8066, 7953, 8078, 8084, 8086. All of those exhibits are

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subject to redactions based on the Court's prior rulings.

THE COURT: Any objection?

MR. O'CONNOR: No objection.

THE COURT: Okay. Those are admitted subject to redaction.

(Exhibits 8048, 7958, 8054, 8057, 8066, 7953, 8078, 8084, 8086 admitted.)

THE COURT: You may proceed.

MS. HELM: Thank you, Your Honor.

DORIS JONES,

recalled as a witness herein, after having been previously sworn or affirmed, was examined and testified as follows:

C R O S S - E X A M I N A T I O N

BY MS. HELM:

Q Good morning, Ms. Jones.

A Good morning.

Q My name is Kate Helm, and I don't think we've met before, other than passing each other going in the door. My job this morning is to ask you a few follow-up questions, and so I'm going to do that. Okay?

A Okay.

Q And I'm going to ask you some questions about your medical history and some events that occurred both prior to you having the filter implanted and after the filter was implanted.

Okay?

CROSS-EXAMINATION - DORIS JONES

09:03:10 1 A Okay.

2 Q You have sort of a long history of stomach ulcers and
3 bleeding ulcers, don't you?

4 A Yes, I do.

09:03:20 5 Q In fact, it goes as far back as 1993 or 1994?

6 A Yes.

7 Q And you've had multiple surgeries for bleeding ulcers,
8 haven't you?

9 A Yes.

09:03:36 10 Q Three or four?

11 A Three or four, yes.

12 Q And I want to take you to 2006. Do you remember you were
13 living in Jacksonville at that time?

14 A Yes, I was.

09:03:47 15 Q Okay. And in 2006 you had a problem with a bleeding
16 ulcer, did you not?

17 A Yes, I did.

18 Q And you went to the hospital complaining of chest pain and
19 nausea and dizziness, didn't you?

09:04:01 20 A Yes, I did.

21 Q And, in fact, you had chest pain and tingling in your
22 arms, didn't you?

23 A Yes, I did.

24 Q Okay. So in 2015, back when you had the filter removed,
09:04:13 25 that wasn't the first time you had had chest pain or tingling

CROSS-EXAMINATION - DORIS JONES

09:04:16 1 in your arms, was it?

2 A No.

3 Q You had had that before?

4 A Yes.

09:04:21 5 Q And in 2006 when you went to the hospital in Jacksonville,
6 you had to have a laser surgery for the bleeding ulcer, didn't
7 you?

8 A Yes, I did.

9 Q Okay. And, in fact, you went to the hospital two times,
09:04:36 10 didn't you?

11 A I --

12 Q Do you remember that?

13 A No.

14 Q Do you remember passing out one time and having to have
09:04:43 15 the paramedics take you to the hospital in Jacksonville?

16 A No. I don't remember.

17 Q Okay. If that's in your medical records --

18 A I don't remember that, though.

19 Q Okay. But if it's in your medical records, it probably
09:04:54 20 happened; right?

21 A Probably did.

22 Q Okay. Was a long time ago?

23 A Yeah.

24 Q Was that the first time you had to have surgery for the
09:05:01 25 bleeding ulcers?

CROSS-EXAMINATION - DORIS JONES

09:05:03 1 A Surgery? No.

2 Q You'd had it before 2006?

3 A 2006, that's the only one I remember about the surgery.

4 Other than that, no surgeries.

09:05:13 5 Q Okay. So 2006 was the first surgery?

6 A Yes.

7 Q And that was the day that you had arm tingling and chest
8 pain and you ended up having to have what was a laser surgery.

9 Do you remember that?

09:05:27 10 A Yes.

11 Q Then in 2009 you were back in Savannah.

12 A Yes.

13 Q And you had to have another surgery; is that right?

14 A Yes.

09:05:35 15 Q Okay. And you went to Memorial Hospital that time; right?

16 A Yes, I did.

17 Q Okay. And, again, in 2009 you had passed out at home,
18 right, and had to be taken to the hospital?

19 A I don't think I passed out.

09:05:50 20 Q Okay.

21 MS. HELM: Scott, would you pull up 8084, please.

22 THE WITNESS: I don't remember.

23 MS. HELM: I'm sorry, 8054.

24 I'm sorry, 8057. I had the wrong one.

25

CROSS-EXAMINATION - DORIS JONES

09:06:09 1 BY MS. HELM:

2 Q Okay. You don't remember that you passed out?

3 A No, I don't.

4 I've got the wrong one.

09:06:17 5 Q Okay. Did you have to have another surgery in 2009 for
6 the stomach ulcers?

7 A I probably did. I don't remember.

8 Q Unfortunately, there have been many of them; right?

9 A Right.

09:06:32 10 Q Okay. And then in 2010, that was the time you were having
11 an ulcer bleed and you had to get the filter; is that right?

12 A Yes, it was.

13 Q And before that one you were really suffering from some
14 pretty significant fatigue, weren't you?

09:06:49 15 A Yes.

16 Q And you had to quit your job because you were too tired to
17 work at Taco Bell at the time?

18 A No, that wasn't the reason.

19 Q Okay. Why --

09:06:57 20 A The reason was that my boss said that he had to get a
21 doctor's excuse. I brought the doctor's excuse, but he said
22 that he didn't want to risk me getting sick or anything
23 happening to me on the job.

24 Q Okay. Okay.

09:07:12 25 But you were throwing up blood and sick and dizzy and

CROSS-EXAMINATION - DORIS JONES

09:07:16 1 very tired; correct?

2 A Yes.

3 Q And do you remember in 2010 that you were diagnosed as
4 having anemia?

09:07:26 5 A 2010. Yeah.

6 Q Was it before that that you were diagnosed with having
7 anemia?

8 A When I was diagnosed with having anemia, I was young. I
9 was very young. So I knew about the anemia.

09:07:37 10 Q Okay. So you've been diagnosed with anemia for a very
11 long time; is that right?

12 A Yes.

13 Q Okay. And you understand that the anemia can make you
14 tired?

09:07:47 15 A Yes.

16 Q And you understand that the anemia can make you dizzy?

17 A No. I didn't.

18 Q Okay. But you've definitely had prior episodes of
19 dizziness throughout the years that you've ended up in the
09:07:59 20 hospital, right?

21 A Yes.

22 Q When you had to get the filter in 2010, do you remember
23 much about the discussions for the filter?

24 A Not really.

09:08:16 25 Q You had a pretty significant stomach ulcer and were going

CROSS-EXAMINATION - DORIS JONES

09:08:19 1 to have to have some pretty significant surgery; right?

2 A Yes.

3 Q And you were in the hospital quite a while, weren't you?

4 A Yes, I was.

09:08:26 5 Q And that was related to the stomach surgery?

6 A Ulcer, yes.

7 Q And I think you said in your deposition you said that was
8 one of the bad ones.

9 A Yes, it was.

09:08:36 10 Q Okay. And was your husband there at the hospital with
11 you?

12 A Yes, he was.

13 Q And did he talk to the doctors about the filter?

14 A Yes.

09:08:44 15 Q And were you there? Were you listening?

16 A I was there but I was medicated, so I don't know what they
17 was talking -- he probably was talking to me but I can't
18 remember anything. So it was between him and my husband who
19 was talking.

09:09:00 20 Q So you deferred to your husband's decision about having --
21 about you having a filter?

22 A Yes.

23 Q Okay. Did he talk to you about that?

24 A About having a filter?

09:09:11 25 Q Yes, ma'am.

CROSS-EXAMINATION - DORIS JONES

09:09:11 1 A Yes.

2 Q Okay. And you decided, based on your husband's
3 conversations with the doctor, to have the filter; correct?

4 A Yes.

09:09:25 5 Q After that surgery in 2010, you didn't go back to work for
6 a while, did you?

7 A No, I didn't.

8 Q You stayed home and were sort of recuperating from your
9 ulcer issues; correct?

09:09:36 10 A Yes, I was.

11 Q And then in 2012 you had to go back to Memorial Hospital
12 because you had chest pain. Do you recall that?

13 A In 2012?

14 Q Yes, ma'am.

09:09:51 15 A I really don't.

16 MS. HELM: Would you pull up 8067, please.

17 BY MS. HELM:

18 Q Ms. Jones, do you have your glasses?

19 And do you see at the very beginning under history of
09:10:17 20 present illness it says --

21 MS. HELM: And if you'll just take it up to the first
22 three lines, four lines, Scott.

23 That's good.

24 BY MS. HELM:

09:10:28 25 Q It says the patient is you, and you were admitted to the

CROSS-EXAMINATION - DORIS JONES

09:10:32 1 emergency room with complaint of substernal chest pain present
2 since January 8, 2012.

3 Do you see that?

4 A Yes, I do.

09:10:40 5 Q And it says you described it as a 10 out of 10 in
6 intensity. So you were in pretty significant pain; is that
7 right?

8 A Yes, I was.

9 Q Do you recall this?

09:10:52 10 A To be honest with you, I really don't.

11 Q So you don't recall how they treated you in the hospital
12 or anything that occurred?

13 A No, I don't.

14 Q Okay. And no one -- and during that hospitalization in
09:11:06 15 2012, when you went in for the chest pain, no one told you
16 anything about your filter; is that right?

17 A No, they didn't.

18 Q And you didn't ask any questions about the filter; right?

19 A No, I didn't.

09:11:18 20 Q Okay. Thank you.

21 Now, in 2013, you again had to go back to Memorial
22 Hospital because you were -- I think you were working in the
23 yard and felt light-headed and dehydrated. Do you remember
24 that?

09:11:33 25 A In the yard?

CROSS-EXAMINATION - DORIS JONES

09:11:34 1 Q Okay.

2 MS. HELM: Would you pull up 7596, please.

3 BY MS. HELM:

4 Q Ms. Jones, do you see that that shows that you went to

09:11:44 5 Memorial Hospital on August --

6 MS. HELM: I'm sorry, may I publish this, Your Honor?

7 THE COURT: Yes.

8 MS. HELM: Thank you.

9 THE COURTROOM DEPUTY: 7956?

09:11:58 10 MS. HELM: Yes, ma'am.

11 MR. O'CONNOR: Excuse me, Your Honor, may we

12 approach? There should be -- may we approach before this is

13 published?

14 THE COURT: Yes.

09:12:06 15 THE COURTROOM DEPUTY: I'm sorry, I don't show it --

16 THE COURT: What is the exhibit number, Ms. Helm?

17 MS. HELM: 7956. I believe it came in with Dr. Hurst

18 yesterday. I may have the wrong number, but it definitely

19 came in with Dr. Hurst yesterday.

09:12:18 20 THE COURT: We don't show that as being admitted.

21 MS. HELM: I apologize. I'll check my exhibit

22 number.

23 THE COURT: So are we taking this down?

24 MS. HELM: Yeah, you need to take it down.

09:12:28 25 THE COURT: Does that resolve your issue,

CROSS-EXAMINATION - DORIS JONES

09:12:29 1 Mr. O'Connor?

2 MR. O'CONNOR: That resolves it.

3 THE COURT: Okay.

4 (Counsel confer.)

09:12:51 5 BY MS. HELM:

6 Q Ms. Jones, you don't recall going back to the hospital in
7 2013?

8 A No, I don't.

9 Q If there are medical records that show you went to the
09:13:02 10 hospital in 2013, it's just something you don't remember; is
11 that correct?

12 A It's something I don't remember.

13 Q Okay. And you may well have gone; right?

14 A I may well.

09:13:10 15 Q And if you're feeling dizzy or dehydrated or fainted at
16 home, that's what would you do, you would go to the hospital;
17 right?

18 A Sometimes, yes. Sometimes, no.

19 Q Okay. Thank you.

09:13:22 20 A You're welcome.

21 Q Now, in 2015 in April you went to the hospital twice, one
22 day and then went home, and went back the next day; is that
23 right?

24 A Yes, I did.

09:13:33 25 Q And you had light-headedness, dizziness; is that right?

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09:13:36 1 A Yes, I did.

2 Q And you had that arm pain like you had had in 2006; is
3 that right?

4 A Yes.

09:13:42 5 Q And it was during that hospitalization, during this --
6 when you went back the second time that they took out your
7 filter; is that right?

8 A When I went back the second time?

9 Q Yes, ma'am.

09:13:54 10 A That's when they took the X-rays of my chest and that's
11 when they told me that the filter had broken off. I didn't
12 have an operation until probably the next day after that.

13 Q Okay. But you stayed in the hospital -- or did you go
14 home and come back?

09:14:10 15 A No, I stayed in the hospital.

16 Q Okay. And you talked a little bit yesterday about the
17 procedure that they did to take the filter out.

18 A Yes.

19 Q And you said they gave you some medication, you told them
09:14:21 20 you could still feel it, and then they gave you a little
21 bit -- they gave you some more; is that right?

22 A When they took it out of my neck?

23 Q Yes, ma'am.

24 A No, I said when they was putting it in.

09:14:31 25 Q Oh, that pain was when they put it in?

CROSS-EXAMINATION - DORIS JONES

09:14:33 1 A When they put it in.

2 Q Okay. So when they put the filter in, you said you could
3 feel it and they gave you more medication; is that right?

4 A Yes, that's right.

09:14:43 5 Q When they took -- when they took it out, they had given
6 you medication and you couldn't feel it; correct?

7 A When they took it out, I was asleep. I was on medication
8 where they put me to sleep on that one.

9 Q So you didn't feel anything when they took it out;
09:14:55 10 correct?

11 A No.

12 Q Is that right?

13 A That's right.

14 Q Okay. Thank you.

09:14:58 15 A You're welcome.

16 Q Now, when you left the hospital in April of 2015, you were
17 told to do a follow-up with a doctor, Dr. Chodos. Do you
18 remember that? A young doctor?

19 A No.

09:15:17 20 Q Okay. Well, if your medical records indicate you went
21 back and saw Dr. Chodos in May of 2015, you don't have any
22 reason to disagree with that, do you?

23 A No, I don't.

24 Q Okay. And when you went back to see Dr. Chodos in May of
09:15:34 25 2015, you don't remember that at all? Going to -- he's a

CROSS-EXAMINATION - DORIS JONES

09:15:39 1 really young doctor.

2 A No, I don't.

3 Q Okay.

4 So you don't remember any follow-up at all after you
09:15:46 5 were --

6 A Only follow-up I remember they telling me to do is go to
7 Curtis Cooper.

8 Q Okay. We're going to talk about Dr. Cooper in a minute.

9 So from when you got the filter removed in April of
09:16:01 10 2015, until today, you've only been to the hospital or the
11 doctor one time; is that right?

12 A Yes.

13 Q And that's because you had to go; right?

14 A Yes.

09:16:13 15 Q And that was in 2016 when you went to St. Joseph's
16 Hospital because of another bleeding ulcer; is that right?

17 A Yes, it was.

18 Q Okay. And in 2016 you woke up vomiting blood, didn't you?

19 A I wasn't waking up vomiting blood. I was already up.

09:16:33 20 Q Okay. You were up and then you started vomiting blood; is
21 that right?

22 A Yes.

23 Q And your husband took you to the hospital; is that right?

24 A Yes, he did.

09:16:41 25 Q Okay. And that was a bad -- that was another really bad

CROSS-EXAMINATION - DORIS JONES

09:16:44 1 bleed, wasn't it?

2 A Yes, because that one caught me off guard because I wasn't
3 sick at all. I was getting ready for work, and when I went to
4 get my purse and stuff, that's when I start throwing up blood.

09:16:59 5 And that's when he rushed me to the hospital.

6 Q And where were you working in 2016 when that happened?

7 A I was working at the police station.

8 Q So you went back to the police station after you had the
9 filter retrieved; is that right?

09:17:13 10 A Yes.

11 Q Okay. And that one caught you off guard and you started
12 vomiting up blood and had to go to the hospital immediately --

13 A Yes.

14 Q -- is that right?

09:17:22 15 And, again, you were in the hospital quite a long
16 time, weren't you?

17 A Yes, I was.

18 Q Okay. And they did do two surgeries, didn't they?

19 A Yes.

09:17:30 20 Q They did one, they thought it was okay, and then it wasn't
21 and you ended up in the ICU, didn't you?

22 A Yes.

23 Q It was pretty scary, wasn't it?

24 A Yes, it was.

09:17:40 25 Q Okay. When you left the hospital in 2016, after you had

CROSS-EXAMINATION - DORIS JONES

09:17:44 1 the two surgeries, they told you to follow-up with Dr. Curtis
2 Cooper, didn't they?

3 A Yes, they did.

4 Q And Dr. Cooper is a doctor in Savannah; is that right?

09:17:53 5 A Yes. He's a clinic.

6 Q Like a primary care clinic that you can go to for lots of
7 reasons in Savannah?

8 A Yes.

9 Q And when you left in 2016 and they told you to go see
09:18:06 10 Dr. Cooper, you didn't go, did you?

11 MR. O'CONNOR: Objection. Irrelevant.

12 THE COURT: Can we talk about this for a minute,
13 Counsel, please.

14 If you want to stand up, ladies and gentlemen, feel
09:18:17 15 free.

16 (Bench conference as follows:)

17 THE COURT: What's the relevancy? Is this your
18 failure to mitigate defense?

19 MS. HELM: Yes, Your Honor. She says she's worried
09:18:30 20 and worried and worried and she's told many times to follow up
21 with physicians. She hasn't done it. She testified that she
22 was going to go to a doctor and she hasn't gone.

23 I'm clearly entitled to go into -- I mean, if she's
24 worried and won't go to the doctor, we're entitled to know
09:18:42 25 that it's been recommended to her on a number of occasions.

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09:18:47 1 MR. O'CONNOR: We talked about failure to mitigate.
2 I mean, Your Honor --

3 THE COURT: We said it was in the case. That was
4 what we said at the final pretrial conference. I think it
09:18:55 5 was -- that it is part of the defense of the case.

6 MR. O'CONNOR: But now we're going to start opening
7 the door to finances and all that.

8 THE COURT: Do you agree they go into the fact that
9 she's financially unable to go to the doctor?

09:19:07 10 MS. HELM: Your Honor, if they go into that, I'm
11 going to have to be heard on that because there is case law in
12 Georgia that if that becomes a material issue, we're entitled
13 to -- it's a waiver of the collateral source rule. And, also,
14 if they go into that, I've got evidence that Curtis Cooper is
09:19:24 15 a free clinic.

16 MR. O'CONNOR: Well, we have no evidence of that. I
17 don't know how they're going to prove that up.

18 THE COURT: Well, there is a failure to mitigate
19 defense in this case. So my question is what is the basis for
09:19:38 20 your relevancy objection if there's a failure to mitigate
21 defense?

22 MR. O'CONNOR: Well, I suppose because I don't know
23 how they're going to tie it up. Failure to mitigate. Did it
24 result in any further damage? They're not going to be able to
09:19:55 25 prove that.

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09:19:55 1 It is just really an attempt to once again inflame
2 the jury here. And also to put us in a predicament where
3 they're going to open a door and they're going to make this
4 into a collateral issue trial on issues that have no
09:20:06 5 relevancy here.

6 THE COURT: Ms. Helm, explain to me what damages she
7 failed to mitigate by not going to see Dr. Cooper.

8 MS. HELM: First, Your Honor, Mr. O'Connor asked her
9 yesterday if she had been to any doctor, and she testified no,
09:20:25 10 that she had not been to the doctor because she was scared.

11 It fails to mitigate her worry claim, her emotional
12 distress claim, because there's testimony in the case that
13 will come in that she was told there was nothing to worry
14 about. She's had the opportunity to go have the filter
09:20:45 15 checked and she hasn't done it.

16 So the jury's left with this I'm worried, I'm
17 worried, I'm worried, where she hasn't gone. She testified
18 in her deposition that she was going to go to see Dr. Cooper
19 to determine whether it was in her head or whether she really
09:21:00 20 had something to worry about.

21 So it clearly goes to her failure to mitigate this
22 worry and concern claim because she could get peace of mind
23 by simply going to a doctor and having them evaluate the
24 filter for her.

09:21:15 25 I am not going to ask her why she didn't go. I'm

CROSS-EXAMINATION - DORIS JONES

09:21:17 1 just going to confirm that there have been many opportunities
2 and many instructions to go and she hasn't gone.

3 THE COURT: Was the recommendation to follow up with
4 Dr. Cooper after the 2016 bleed?

09:21:28 5 MS. HELM: Yes, Your Honor.

6 THE COURT: So how was that a recommendation to go to
7 Dr. Cooper to get the filter fragment checked?

8 MS. HELM: Well, Your Honor, it's a pattern of
9 showing that she's been recommended to obtain medical care and
09:21:39 10 doesn't do it.

11 THE COURT: When was she recommended to do a
12 follow-up medical check on the filter fragment?

13 MS. HELM: There hasn't been one. She's been told
14 there hasn't been one. But it goes to her worry claim,
09:21:52 15 Your Honor, because her testimony is, I was going to go see
16 Dr. Cooper to see if I had anything to worry about. It's in
17 her deposition. We're getting to it. I'm just going
18 chronologically.

19 THE COURT: See if I have anything to worry about
09:22:04 20 with the filter?

21 MS. HELM: Yes, Your Honor. Exactly.

22 THE COURT: Well, that hasn't been brought out at
23 this point. And if the recommendation was to go to see
24 Dr. Cooper because of the follow-up on the GI bleed, it seems
09:22:13 25 to me there's no reason she would think to go and see him

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09:22:19 1 would tell her anything about the filter. That's the
2 disconnect I'm seeing right now in the evidence.

3 MS. HELM: Well, Your Honor, I believe it shows a
4 pattern of failing to follow instructions to follow the
09:22:28 5 primary care --

6 THE COURT: Well, but if there's no instruction that
7 she's received to see a doctor to follow up on the filter,
8 then it seems to me the pattern argument doesn't work because
9 she's never been told to go see somebody as a follow-up on the
09:22:43 10 filter, unless you have evidence that she has.

11 MS. HELM: No, Your Honor, I don't.

12 THE COURT: Well, so, all we've got, then, as I
13 understand it, Ms. Helm, is no recommendation from a doctor to
14 see Cooper in order to address the filter, but testimony in
09:22:58 15 her deposition that she thought she could find out from Cooper
16 whether there was anything to worry about with the filter.

17 MS. HELM: Exactly, Your Honor.

18 THE COURT: I think that's relevant. If you can lay
19 the foundation that she thought she could ease her worry on
09:23:14 20 the filter from going to see Dr. Cooper, and she didn't, I
21 think that's relevant on the worry claim, but I don't know
22 where this is going in terms of opening the door to her
23 financial condition, and I am not saying at this point that I
24 am going to conclude this opens up the collateral source rule.

09:23:36 25 So -- but I can't conclude it's irrelevant if she

CROSS-EXAMINATION - DORIS JONES

09:23:39 1 thought she could get relief from her worry from Dr. Cooper
2 and didn't go. That clearly goes to her worry.

3 MR. O'CONNOR: I think it's a stretch and, you know,
4 I just think, again, we're getting into a realm of evidence
09:23:52 5 that doesn't really exist. It was a creation of some type of
6 fabrication, possibly at the deposition, but I just see this
7 going --

8 THE COURT: Fabrication by your client?

9 MR. O'CONNOR: No. That they're forcing --

09:24:03 10 THE COURT: Why do you say fabrication?

11 MR. O'CONNOR: Well, let --

12 MS. HELM: Your Honor, may I go get the transcript?

13 THE COURT: No.

14 MR. O'CONNOR: They're creating an issue that doesn't
09:24:13 15 exist.

16 THE COURT: But she testified to that in her
17 deposition.

18 MR. O'CONNOR: Well, I have to go look at it again.

19 THE COURT: Well, then go get the transcript.

09:24:45 20 MS. HELM: "Do you intend to schedule any visit to
21 any physician for physical problem?"

22 "I want to try to go to Curtis."

23 THE COURT: This is --

24 MS. HELM: Her transcript --

09:24:54 25 THE COURT: Is this the date of the deposition?

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09:24:55 1 MS. HELM: Yes, Your Honor, February 3rd.

2 THE COURT: So this is after the 2016 Cooper visit?

3 MS. HELM: Yes, Your Honor.

4 THE COURT: Okay.

09:25:01 5 MS. HELM: And her testimony is --

6 THE COURT: I'll read it.

7 MS. HELM: I'm sorry.

8 Your Honor, she's --

9 THE COURT: Well, so, what she said, as I understand

09:25:23 10 it, Ms. Helm, was in February of 2017, so three months ago.

11 MS. HELM: Actually 15 months ago, Your Honor.

12 THE COURT: Isn't this 2017?

13 So February 2017 she said she was going to see

14 Dr. Cooper to find out if this was in her head or not; right?

09:25:46 15 MS. HELM: Your Honor, she's --

16 THE COURT: Is that right?

17 MS. HELM: That's her testimony, Your Honor. Yes,

18 Your Honor.

19 THE COURT: Okay. Well, then, it seems to me that if

09:25:52 20 you want to use this as the basis, then what you can do is ask

21 her whether in fact it was her intention in February of 2017

22 to go to Dr. Cooper to see whether or not this was in her head

23 or whether it was a real problem. And if she says yes, then

24 you can say did you go, and if she says no, you've established

09:26:14 25 that point. But I can't conclude at this stage that

CROSS-EXAMINATION - DORIS JONES

09:26:17 1 doesn't -- the -- open the door to her saying why didn't you
2 go and her saying I can't afford it.

3 MS. HELM: But, Your Honor she's going to testify, I
4 anticipate, and maybe I need to ask this question, when did
09:26:30 5 she start worrying. I anticipate she's going to say she
6 started worrying in 2015 when she learned about the strut. So
7 she had the opportunity it in 2016 and was recommended in 2016
8 to go see Dr. Cooper.

9 THE COURT: But not for the strut; right?

09:26:44 10 MS. HELM: I'll go back and ask her if she asked
11 anyone in the hospital to check on the strut in 2016 or if she
12 went to Dr. Cooper.

13 THE COURT: Okay. Here's my ruling. Before you can
14 elicit testimony that she did not go see a doctor, you need to
09:26:56 15 lay the foundation either that she was told to follow up on
16 the strut or that she believed she could follow up on the
17 strut.

18 MS. HELM: I understand, Your Honor. Thank you.

19 MR. O'CONNOR: There's still this issue that she's
09:27:08 20 already went down, and this is my point, she's already said
21 she didn't go to a visit that has nothing to do with the
22 filter. That's already out there. This is a whole different
23 issue now that -- talking about something after that. She --
24 counsel has already asked her, you didn't go to that doctor,
09:27:24 25 implying that she could have done something about the filter,

CROSS-EXAMINATION - DORIS JONES

09:27:27 1 where clearly that wasn't the issue. Clearly, the issue about
2 that visit that was said that she could go to had to do with
3 bleeding ulcers, nothing about the filter.

4 THE COURT: So therefore what?

09:27:37 5 MR. O'CONNOR: Therefore, I think you should move
6 to -- I mean, I don't know how to handle it other than she
7 shouldn't go in there again. I mean, they're drawing --
8 they're putting questions out there that they know they can't
9 tie up. These are two different issues from two different
09:27:51 10 points in time.

11 THE COURT: Well, you're talking about the answer
12 that was just given?

13 MR. O'CONNOR: I didn't go back.

14 THE COURT: Hold on just a minute.

09:28:35 15 She never answered the question. So there's been no
16 answer. The question was asked, you objected, and we started
17 the sidebar. So she hasn't given any evidence about not
18 going to the doctor.

19 MR. O'CONNOR: Will my objection be sustained?

09:28:50 20 THE COURT: Well, I was going to move on to the next
21 question.

22 MS. HELM: I will move on.

23 THE COURT: We've instructed the jury questions are
24 not evidence. I'll sustain the objection just so the jury
09:28:59 25 knows, and then move on to other points we've talked about.

CROSS-EXAMINATION - DORIS JONES

09:29:00 1 MS. HELM: I understand, Your Honor. Thank you.

2 (Bench conference concludes.)

3 THE COURT: Thank you, ladies and gentlemen.

4 The objection to the last question is sustained.

09:29:12 5 Ms. Helm, you may proceed.

6 MS. HELM: Yes, Your Honor. I'll move on.

7 BY MS. HELM:

8 Q Ms. Jones, in 2016 when you had the GI bleed and had to go

9 to St. Joseph's Hospital, that was after the filter had been

09:29:26 10 removed; right?

11 A Yes.

12 Q Okay. And that was after you had learned about the --

13 that the strut was still in your pulmonary artery; right?

14 A Right.

09:29:38 15 Q So you knew that when you went to the hospital in 2016;

16 right?

17 A Right.

18 Q You testified yesterday that you were worried about the

19 strut in your -- that's still retained in your pulmonary

09:29:50 20 artery. You remember telling the jury that?

21 A Yes, I do.

22 Q When did you start worrying about that?

23 A The first day they told me about that.

24 Q So in 2015 when you learned about it, that's when you

09:30:04 25 started worrying?

CROSS-EXAMINATION - DORIS JONES

09:30:05 1 A Yes.

2 Q Okay. So when you went to the hospital in 2016 for the GI

3 bleed, did you ask anyone at the hospital to check on the

4 strut in your lung?

09:30:20 5 A No.

6 Q But you knew it was there; right?

7 A Yes. And I also told them that I had it there too.

8 Q But you didn't ask them to check on it?

9 A No, I didn't.

09:30:28 10 Q Even though you were worried about it?

11 A I was worried about it, and also when the doctor told me

12 it was a safe place where it was at, so.

13 Q I'm sorry, the doctor told you what?

14 A At Memorial Hospital, when the doctor said it is more

09:30:39 15 safer there, where it's at.

16 Q Okay. So the doctor at Memorial Hospital told you that it

17 was okay where it was and it was safer where it was; right?

18 A Right.

19 Q And she told you you didn't need to do anything about it;

09:30:53 20 right?

21 A Right.

22 Q When did you start taking care of your grandchildren

23 full-time?

24 A Well, first full-time I really start taking care of them

09:31:06 25 is when my oldest was about two years old. Full-time, like, I

CROSS-EXAMINATION - DORIS JONES

09:31:15 1 go to work too, and I come home and take care of them while
2 their parents is at work, because the mother will work in the
3 morning and the dad work at night. So in between I would take
4 care of her.

09:31:24 5 Q Okay. So after you had -- was that after you had the
6 filter removed?

7 A That's when I got -- she was born in 2010. December. So
8 that's when I had this --

9 Q Okay. When did you quit the job at the police station and
09:31:42 10 just start taking care of your granddaughters?

11 A I quit the job after the doctors -- my husband told me the
12 doctor said basically I can't work.

13 Q Okay. So you quit the job after you had the filter
14 removed; is that right?

09:31:58 15 A Yes.

16 Q So it was after -- I want to make sure you're right. I
17 know it's hard to remember things.

18 Let me see if I can help you.

19 A Okay.

09:32:13 20 Q You take care of three granddaughters; right?

21 A Yes, I do.

22 Q And I believe they are seven, three, and one, or seven,
23 four, and one?

24 A Seven, three, and 11 months. She'll be one the first of
09:32:30 25 next month.

CROSS-EXAMINATION - DORIS JONES

09:32:31 1 Q Have you always taken care of the three-year-old?

2 A Yes, I have.

3 Q So for at least the last three years you've been taking

4 care of your grandchildren; right?

09:32:39 5 A Yes.

6 Q And that's what you've been doing full-time; right?

7 A Yes.

8 Q So that takes us back to around 2015?

9 A Right.

09:32:45 10 Q Okay. Okay. So -- and the seven-year-old and the

11 three-year-old, they live with you?

12 A Yes, they do.

13 Q And your daughter that was here yesterday, she lives with

14 you?

09:32:57 15 A Yes, she does.

16 Q And her husband; right?

17 A No, he don't.

18 Q Oh, he doesn't live with you?

19 A No.

09:33:01 20 Q Did he at one point live with you?

21 A At one point he did.

22 Q Okay. So in your house today, it is you, Mr. Jones, your

23 daughter, and your two -- and I apologize, I'm really bad with

24 names, and so rather than mess them up I'm just going to

09:33:15 25 identify them -- and your two granddaughters; is that right?

CROSS-EXAMINATION - DORIS JONES

09:33:17 1 A Yes.

2 Q And your other daughter lives real close by?

3 A Yeah. She stay right across the street.

4 Q Okay. And so since 2000- -- approximately 2015, what

09:33:27 5 you've been doing is taking care of your grandchildren; right?

6 A Yes.

7 Q And it was in 2015 that you had the filter removed and

8 found out about the strut that's in your pulmonary artery;

9 right?

09:33:40 10 A 2015. Yes.

11 Q Okay. So the whole time you've been taking care of your

12 two youngest grandchildren, you knew about that; right?

13 A I knew about that.

14 Q Okay.

09:33:52 15 Now, do you remember giving your deposition in this

16 case? Do you remember having to go, I think maybe to a hotel

17 room or an office somewhere, and a man named Mr. Hom talked to

18 you? Do you recall that?

19 A Yes, I do.

09:34:11 20 Q Okay. And do you remember in your deposition telling

21 us -- and that was in February of 2017; is that right?

22 A Right.

23 Q So about a little over a year ago; right?

24 A Right. Yes.

09:34:23 25 Q And you told Mr. Hom that you were going to see a doctor

CROSS-EXAMINATION - DORIS JONES

09:34:31 1 to determine whether you had anything to worry about with your
2 filter strut. Do you remember that testimony?

3 A No. I don't.

4 MS. HELM: Can you pull up her deposition, page 56,
09:34:43 5 please.

6 BY MS. HELM:

7 Q Ms. Jones, can you see that?

8 A Yes, I can see this.

9 Q Can you see the numbers down the left side?

09:35:09 10 You see the numbers on the left side of the page?

11 A Yes, I do.

12 Q Okay. I'm going to start at number 17.

13 Do you see where I am?

14 A Yes, I do.

09:35:16 15 Q And the question to you was: "Do you intend to schedule
16 any visit to any doctor for your physical problems?"

17 And your answer was: "I want to try to go see Curtis
18 V. Cooper to see if it's just a mental thing or do I really
19 have anything to worry about because in my mind this is a
09:35:35 20 mental thing to me because it's in my chest."

21 And the question was: "And you said you plan to see
22 Curtis Cooper?"

23 And your answer was: "I'm going to see Curtis
24 Cooper."

09:35:48 25 Did I read that correctly?

CROSS-EXAMINATION - DORIS JONES

09:35:49 1 A Yes, you did.

2 Q Okay. So, Ms. Jones, in February of 2017 you testified
3 that you were going to go see Dr. Cooper to check on the strut
4 and whether you had anything to worry about; correct?

09:36:02 5 A Correct.

6 Q Okay. And you haven't done that, have you?

7 A No, I haven't.

8 Q And you haven't been to any doctor to have them check on
9 the strut, have you?

09:36:10 10 A No, I haven't.

11 Q You testified yesterday that you worry something's going
12 to happen to you while you're with your grandbabies; right?

13 A Yes, I do.

14 Q Do you ever worry that you're going to faint again?

09:36:27 15 A Yes.

16 Q Do you worry that you might have another bleeding ulcer
17 and suddenly get ill and throw up blood while you're with your
18 grandbabies?

19 A Yes, I do.

09:36:38 20 Q Do you worry that you're going to have dizziness and pass
21 out?

22 A Yes, I do.

23 Q And since you've learned about the filter, you've indeed
24 had a very bad physical issue with a stomach bleed, haven't
09:36:52 25 you? With a bleeding ulcer?

CROSS-EXAMINATION - DORIS JONES

09:36:55 1 A Yes.

2 Q But you haven't had any issues related to the strut, have
3 you?

4 A No.

09:37:03 5 Q When you came out here for this lawsuit, was that the
6 first time you heard about a special doctor who might be able
7 to take the strut out?

8 A No.

9 Q When did you first learn about there might be a doctor who
09:37:18 10 could take the strut out? You testified about that yesterday.

11 MR. O'CONNOR: Objection, Your Honor. This may go
12 into privileged matters.

13 THE COURT: I think you need to ask this question in
14 a way that doesn't address any privileged communications,
09:37:30 15 Ms. Helm.

16 MS. HELM: Your Honor, I simply asked when. I didn't
17 ask the source.

18 THE COURT: Ask in a way that makes clear there is no
19 privilege being inquired into.

09:37:37 20 MS. HELM: Sure.

21 BY MS. HELM:

22 Q Ms. Jones, I don't want to know anything your lawyers have
23 told you. But when did you learn that there was a specialist
24 or a doctor that might be able to take the strut out?

09:37:49 25 A When?

CROSS-EXAMINATION - DORIS JONES

09:37:49 1 Q Yes, ma'am.

2 A We talked about it when I got here.

3 Q So since you've been in Phoenix; is that right?

4 A Yes.

09:38:00 5 Q But even if there's a doctor that might be able to take it

6 out, you're not sure you would have that done, are you?

7 A I'm not sure.

8 Q Okay. None of the doctors in Savannah who actually

9 treated you at Memorial Hospital or at St. Joe's, none of them

09:38:17 10 have told you that you're going to have any future problems

11 with the strut, have they?

12 A No, they haven't.

13 Q And none of the doctors who have treated you have told you

14 that it might move or cause any complications, have they?

09:38:30 15 A No, they haven't.

16 Q Okay.

17 And, in fact, the only thing they've told you is it's

18 stable where it is; right?

19 A Yes.

09:38:49 20 Q Did you hear yesterday that one of the consultant doctors

21 who's been hired by your lawyers testified that you have a

22 1 percent chance of any problems at all with that strut?

23 A No. I didn't.

24 Q That's a pretty small chance, isn't it?

09:39:07 25 A Yes, it is.

CROSS-EXAMINATION - DORIS JONES

09:39:08 1 MS. HELM: Thank you, Your Honor. No further
2 questions.

3 THE COURT: Redirect?

4 MR. O'CONNOR: Yes, Your Honor.

09:39:13 5 May we just approach on one point, Your Honor?

6 THE COURT: Yes.

7 If you want to stand up, ladies and gentlemen, feel
8 free.

9 (Bench conference as follows:)

09:39:34 10 MR. O'CONNOR: I just want to draw objection. I
11 think they've opened the door to her financial condition, so I
12 want to go into that with her.

13 THE COURT: Tell me what you intend to do.

14 MR. O'CONNOR: I'm going to ask her why she hasn't
09:39:43 15 gone to see a doctor.

16 THE COURT: What do you think she'll say?

17 MR. O'CONNOR: Well, I think there's two reasons.
18 One is because the doctors have not -- have told her it should
19 be safe. Secondly, they put us in a predicament because, you
09:39:57 20 know, we kept her outside of the courtroom --

21 THE COURT: What do you think she'll say? That's my
22 question.

23 MR. O'CONNOR: I think she'll say it was safe and
24 that she can't afford it.

09:40:07 25 THE COURT: Okay. If she says she can't afford to go

CROSS-EXAMINATION - DORIS JONES

09:40:09 1 to the doctor?

2 MS. HELM: Your Honor, I think it opens the door on
3 collateral source generally. There's -- I have a long line of
4 case law and a bench brief on that.

09:40:19 5 THE COURT: What do you mean opens the door?

6 MS. HELM: It becomes -- if you -- if they're allowed
7 to testify that her financial condition is a material issue in
8 this case, then the issue of collateral source and the ability
9 to --

09:40:35 10 THE COURT: That's not my question, Ms. Helm.

11 MS. HELM: I'm sorry, I misunderstood you,
12 Your Honor.

13 THE COURT: My question is -- well, I probably didn't
14 ask it well. My question is real specific. If they elicit
09:40:44 15 testimony that she hasn't gone to the doctor because she can't
16 afford it, what specifically do you think that allows you to
17 do in this case?

18 MS. HELM: I'm allowed to impeach her with the fact
19 that Curtis Cooper is a free clinic. I have an impeachment
09:40:58 20 exhibit tendered that shows that it's a free clinic and a pay
21 as --

22 THE COURT: So that's what you would propose to do?

23 MS. HELM: Yes, Your Honor.

24 THE COURT: It seems to me if she says she can't go
09:41:07 25 to Dr. Cooper because she can't afford it, it's relevant to

CROSS-EXAMINATION - DORIS JONES

bring out the fact that she wouldn't have to pay.

MR. O'CONNOR: But she opened the door to not just Dr. Cooper, but to doctors. And that's the problem. You know, to open a door and then box us in, that's two different issues. She broadened it beyond Cooper.

THE COURT: Mr. O'Connor, my view is what she asked is relevant, clearly relevant, to the worry issue that the plaintiff has testified about. So that's in evidence.

So it seems to me if you elicit testimony that she hasn't gone to see Dr. Cooper because she can't afford it and if they have evidence that he's free, that evidence ought to be able to come in.

Are you suggesting you want to go broader than that and elicit testimony that she hasn't gone to see other doctors besides Cooper because she can't afford it?

MR. O'CONNOR: I think they've opened that door. But, you know, at the same time, I've got to be careful not to make this into a collateral issue that they created. I think that the relevancy here is so slim to none, what they just did.

THE COURT: Well, I disagree with you on that. So the question is where do we go from here?

MR. O'CONNOR: Well, I won't ask her, then, but I want to make a record that I think they've improperly opened the door.

REDIRECT EXAMINATION - DORIS JONES

09:42:23 1 THE COURT: Did you say you want to ask her that?

2 MR. O'CONNOR: I will not go into it with her.

3 THE COURT: Okay. All right.

4 (Bench conference concludes.)

09:42:30 5 THE COURT: Thank you, ladies and gentlemen.

6 R E D I R E C T E X A M I N A T I O N

7 BY MR. O'CONNOR:

8 Q Doris, I have a couple for you.

9 A Okay.

09:42:49 10 Q Monae, she's the oldest granddaughter?

11 A No. She's the baby.

12 Q Which one is the oldest, Zi'Yari or Chastity?

13 A Chastity is the oldest.

14 Q Have you always, ever since your daughters have had

09:43:01 15 children, made yourself available to them in taking care of
16 them, even while you were working?

17 A Yes.

18 Q Is that something you've done since the first baby was
19 born?

09:43:09 20 A Since the first baby was born, yes.

21 Q And eventually it became full-time for you?

22 A Yes.

23 Q Now, let me ask you a question. We heard about the

24 problems you've had with GI bleeding and anemia. And those

09:43:26 25 are problems that you have dealt with over the years; correct?

REDIRECT EXAMINATION - DORIS JONES

09:43:30 1 A Correct.

2 Q Have you been able to get those controlled when you go to
3 the hospital and see the doctors?

4 A Yes.

09:43:36 5 Q Now, when you went to the hospital in 2010 and you were
6 told that you needed the Bard filter, that's where I want to
7 focus, was there a Bard representative there?

8 A No.

9 Q Did anybody tell you that because you've had GI bleeds,
09:43:54 10 because you've had anemia, because you've been sick, that you
11 shouldn't receive a Bard filter? Did anybody ever tell you
12 that?

13 A No.

14 Q Did you receive a filter because you believed -- well,
09:44:10 15 your doctor and your husband believed that it was important
16 for your health?

17 A Yes.

18 Q Did you ever expect that the Bard filter would break and
19 go into your lung?

09:44:25 20 A Oh. I'm sorry. No. No.

21 Q Doris --

22 A I'm sorry.

23 Q That's okay.

24 With your history of GI bleeds, with your history of
09:45:13 25 edema and the other problems you had before the filter, did

REDIRECT EXAMINATION - DORIS JONES

09:45:17 1 you always make it a point to go back to work?

2 A Yes.

3 Q Did you always make it a point to be there for your
4 family?

09:45:27 5 A Yes.

6 Q And even now with your medical history and now with this
7 filter strut, are you still there to be strong for your
8 family?

9 A Yes, I am.

09:45:45 10 MR. O'CONNOR: Thank you. That's all I have.

11 THE COURT: All right. Thanks.

12 Mrs. Jones, you can step down.

13 THE COURT: Mr. Clark?

14 MR. CLARK: Your Honor, the plaintiff would call via
09:46:10 15 video deposition Dr. Kirstin Nelson.

16 And at this time we would move into evidence
17 Exhibits 4403, 4406, subject to appropriate redactions.

18 THE COURT: Any objection?

19 MS. HELM: Your Honor, I apologize. I don't have
09:46:31 20 those exhibits as being listed with Dr. Nelson. May I reserve
21 my objection until the conclusion of the -- are they being
22 published?

23 MR. CLARK: I don't remember if they're published. I
24 can tell you that we had agreed on these previously.

09:46:46 25 MS. HELM: Okay. No objection, then, Your Honor.

REDIRECT EXAMINATION - DORIS JONES

09:46:48 1 THE COURT: All right. Those are admitted.

2 (Exhibits 4403 and 4406 admitted.)

3 THE COURT: And do you want to read an introduction
4 for Dr. Nelson?

09:46:52 5 MR. CLARK: I will.

6 And, Your Honor, there are actually four exhibits
7 referenced in that, two of which were already in evidence.
8 So I do have a cheat sheet for the jury, if you'd like.

9 THE COURT: Okay. That's fine.

09:47:03 10 MR. CLARK: May I approach?

11 THE COURT: Yes.

12 MR. CLARK: Dr. Kirstin Nelson is an endovascular
13 interventional radiologist in Savannah, Georgia. She has been
14 in practice for 11 years and is board-certified in diagnostic
09:47:23 15 with a certificate of additional qualification in
16 interventional radiology.

17 (Video testimony of Kirstin Nelson, M.D. was played.)

18 MR. CLARK: At this time the plaintiff would call
19 David Chodos via video deposition and move into evidence
10:22:26 20 Exhibit 8076.

21 MS. HELM: No objection, Your Honor.

22 THE COURT: Admitted.

23 (Exhibit 8076 admitted.)

24 MR. CLARK: There are two additional exhibits that I
10:22:34 25 would like to provide the cheat sheet for the jury.

REDIRECT EXAMINATION - DORIS JONES

10:22:36 1 THE COURT: All right.

2 MR. CLARK: May I approach?

3 THE COURT: Yes.

4 MR. CLARK: And may I read the summary to the jury?

10:22:49 5 THE COURT: You may.

6 MR. CLARK: Dr. David Chodos, M.D., is a practicing

7 physician who worked as an internal medicine resident at

8 Memorial Health University Medical Center in April 2015.

9 (Video testimony of David Chodos, M.D. was started.)

10:23:22 10 THE COURT: Counsel, could we turn up the volume a

11 little bit.

12 JUROR: There's no video.

13 THE COURT: Let's pause it for a minute.

14 Can the volume be any higher?

10:23:39 15 THE COURTROOM DEPUTY: I've got mine up.

16 THE COURT: Why don't we start it over again since

17 there was a little interruption at the beginning.

18 That's loud enough.

19 Okay. We're going to start over again.

10:24:17 20 (Video testimony of David Chodos, M.D. was played.)

21 THE COURT: Counsel, let's stop the video there.

22 Ladies and gentlemen we will resume at 10:45.

23 (Recess taken from 10:30 to 10:43. Proceedings resumed

24 outside the presence of the jury.)

10:30:02 25 THE COURT: Counsel, I understand that you had an

REDIRECT EXAMINATION - DORIS JONES

10:43:28 1 issue.

2 MR. CLARK: Your Honor, with apologies. You might
3 have heard the reference to high blood pressure in that
4 deposition. We notice there are a number of other references
10:43:38 5 to things that we have talked about this morning as not being
6 relevant.

7 I will say the parties have been working very
8 diligently to try to catch things like that, but in this
9 particular transcript there are a number of them. What we
10:43:49 10 would request jointly is that the Court could inform the jury
11 that there are some technical problems with this transcript
12 and that we're going to move on to the next witness and we
13 will revisit this witness at another point in the trial.

14 THE COURT: So we'll just end the video here?

10:44:05 15 MR. CLARK: Yeah, we'll postpone it.

16 THE COURT: And what do you have after that?

17 MR. CLARK: We will be presenting Lora White live.
18 And then after that we have the depositions of Raji-Kubba,
19 Wong, Alfred Jones, who we will be presenting live. We have
10:44:25 20 the depositions of Mr. Orms, Smith, and Dr. Rogers.

21 THE COURT: All right.

22 Any objection to that?

23 MS. HELM: No, Your Honor. And as far as time
24 allocations, it's words here and there and we'll still be able
10:44:37 25 to work out the total time allocation.

DIRECT EXAMINATION - LORA WHITE

10:44:39 1 THE COURT: Okay. That's fine.

2 MR. CLARK: Thank you. Appreciate it.

3 THE COURT: Bring the jury in.

4 (The jury entered the courtroom.)

10:46:42 5 THE COURT: Please be seated.

6 Ladies and gentlemen, during the break an issue
7 arose about that deposition you were watching of Dr. Chodos.
8 Rather than try to resolve it now, the parties and I agreed
9 we're just going to end it there, go on with the evidence,
10:46:54 10 and we'll come back and replay the rest of that deposition
11 after those issues have been resolved.

12 MR. COMBS: Your Honor, at this time plaintiff would
13 call Lora White.

14 THE COURTROOM DEPUTY: Ms. White, if you'll please
10:47:10 15 come forward, raise your right hand.

16 **LORA WHITE,**

17 called as a witness herein, after having been first duly sworn
18 or affirmed, was examined and testified as follows:

19 D I R E C T E X A M I N A T I O N

10:47:40 20 BY MR. COMBS:

21 Q Good morning, Ms. White. Could you please introduce
22 yourself to the jury once you're settled there.

23 A Sorry, I just don't want to choke. My name is Lora White.
24 I'm a nurse.

10:48:05 25 Q And, Ms. White, why don't you tell the jury why you're

DIRECT EXAMINATION - LORA WHITE

10:48:11 1 here today, what your role is in this case.

2 A So I was hired -- I do life care planning and case
3 management, and I was hired to figure out what future medical
4 care Ms. Jones is going to need and how much that would cost.

10:48:22 5 Q And, Ms. White, you mentioned you're a nurse. What other
6 training do you have that you've applied to your work in this
7 case?

8 A Well, I'm a certified case manager.

9 This is so loud.

10:48:37 10 I'm also a certified life care planner. So you take
11 a course and then you take a test and then hopefully you pass,
12 and then you get your certification.

13 Q And do you work up life care plans as a consultant?

14 A Yes, sir.

10:48:52 15 Q And is that pretty much your full-time job?

16 A Yes. More than.

17 Q You have a business for doing that?

18 A I do. It's called Sims & White. I'm White.

19 Q And in your work as a consultant doing life care plans
10:49:11 20 with Sims & White, about how many life care plans have you
21 done over the years?

22 A Almost a thousand. Might be a little over a thousand now,
23 actually. I've not had a chance to count them lately.

24 Q And did you do a traditional life care plan for this case?

10:49:26 25 A No, I didn't. I did -- basically I would call this kind

DIRECT EXAMINATION - LORA WHITE

10:49:28 1 of a cost projection. So -- because a life care plan, I would
2 interview the client and take everything, equipment,
3 everything. This was just for the care that was necessary as
4 recommended by the doctors.

10:49:42 5 Q And what doctors did you refer to?

6 A Drs. Muehrcke and Hurst.

7 Q And how did you go about collecting this information?

8 A I called them and I asked them what their recommendations
9 were. And then I e-mailed -- I sent them a letter to make
10:50:00 10 sure I didn't hear them wrong. So they both had their
11 recommendations, and then I always try to get them to sign --
12 whatever doctor I'm working with, because, you know, you're
13 human, you make mistakes, I don't want to mis-hear something.
14 So it gives them a chance to change stuff.

10:50:16 15 Q And why did you choose to speak with Dr. Hurst and
16 Dr. Muehrcke about Doris' future medical care in this case?

17 A Because they had already evaluated the patient and the
18 case. They were familiar with the complications from the
19 strut which broke apart, and they knew, because of their
10:50:36 20 practice, what was going to need to be done.

21 Q Is that your usual practice, what you do when you create
22 life care plans?

23 A Yes. I'll go to the doctors that are treating or
24 evaluating, and I go to each specific specialty and I get
10:50:48 25 their recommendation. Because I'm a nurse, I'm not a doctor.

DIRECT EXAMINATION - LORA WHITE

10:50:52 1 Q Is this the process that other life care planners use?

2 A They're supposed to.

3 Q And when you talked to the doctors, what specifically did
4 you understand was the medical condition that you were looking
10:51:06 5 to project treatment costs for?

6 A So the strut that was put in her broke apart and it landed
7 in -- specifically the one I was worried about was the one
8 that was remaining in her pulmonary artery. So that has to
9 come out. And there were two ways that the doctors wanted to
10:51:27 10 try to take that piece out, because it can't sit in there, it
11 causes problems.

12 MS. HELM: Your Honor, excuse me. I move to strike.
13 This is outside the expertise of this witness.

14 THE COURT: You're not going to have the witness
10:51:42 15 opining on whether the strut needs to stay in?

16 MR. COMBS: No, Your Honor.

17 THE COURT: So the jury shouldn't consider the
18 testimony for that purpose, just for the cost projection she's
19 going to give.

10:51:52 20 BY MR. COMBS:

21 Q What were the two options Dr. Hurst and Dr. Muehrcke
22 discussed with you as potential options for removing the
23 fragment?

24 A First option was to try to do it percutaneously. They
10:52:05 25 already tried once, so they wanted to send her to a specialist

DIRECT EXAMINATION - LORA WHITE

1 at Stanford that has a lot of experience with this kind of
2 complicated issue, and so they wanted to try it that way again
3 because it's less invasive. That's what the doctors told me.

4 And then the second one, if that fails, which
5 there's -- it could fail again, then they wanted to do an open
6 procedure. And what that means is they cut her open and take
7 it out physically.

8 Q Two options: One is through the skin and through her
9 circulatory system, the percutaneous procedure; right?

10 A That's correct.

11 Q And another option would be an open procedure?

12 A That's right.

13 Q And why does the -- let's talk about the two different
14 options.

15 What did the doctors recommend -- what were all the
16 things that would go along with the percutaneous procedure, if
17 that was the option?

18 A Well, she's got to go to Stanford, which is in California,
19 so she'll have to travel there, have to stay there for a
20 while. Then she'll have the hospitalization, the anesthesia,
21 the postoperative followup, all of the associated charges with
22 surgery. They have to do some preoperative testing. That is
23 standard of care to make sure she can undergo anesthesia
24 safely and she won't have a difficult time with that. So they
25 do X-rays and EKGs and labs for that.

DIRECT EXAMINATION - LORA WHITE

10:53:34 1 Q So your job, then, was to take all of that that goes along
2 with it and assign it a financial cost; right?

3 A Correct.

4 Q And how did you go about doing that?

10:53:44 5 A I called the providers that were going to be doing the
6 service. So I called the people at Stanford and talked to
7 their billing office. I have CPT codes because when you bill
8 for a procedure, a medical procedure, you use codes. And I
9 worked with the billing office and got their costs. Not hard.

10:54:05 10 Q And what was the -- the surgery itself would be the main
11 cost with this; right?

12 A Yes.

13 Q There's other costs of the travel and then staying and
14 some consultations and imaging. But the surgery is the main
15 cost; right?

16 A Correct.

17 Q Specifically, how did you get the cost of the surgery?

18 A I called the surgical -- I called the surgical place, the
19 place that does the surgery, and I called the doctor that does
10:54:33 20 the surgery. Anesthesia, I went off what is called a fee
21 schedule. So that's how I got them.

22 Q And what hospital was that?

23 A Stanford.

24 Q And what was the total of all of those figures for a
10:54:48 25 percutaneous procedure?

DIRECT EXAMINATION - LORA WHITE

10:54:49 1 A \$130,000-- \$130,157. I don't know why I can't say that.

2 MR. COMBS: Your Honor, may I use the Elmo here?

3 THE COURT: Yes.

4 MR. COMBS: May I publish this to the jury,

10:55:12 5 Your Honor?

6 THE COURT: Yes.

7 BY MR. COMBS:

8 Q Okay. Did I get that number right?

9 A Correct.

10:55:31 10 MR. COMBS: Apologize to everybody for my
11 handwriting.

12 BY MR. COMBS:

13 Q Let's turn to the second option.

14 What was the second option for removing the fragment?

10:55:45 15 A For her to undergo the open procedure. If the
16 percutaneous fails again, they have to go in and take it
17 physically out, open her up. And that can be done in Atlanta,
18 so that's where I priced it. At Emory.

19 Q And why did you pick Atlanta for the procedure when
10:56:06 20 Ms. Jones lives in Savannah?

21 A It was the closest place that had the appropriate care
22 available for her.

23 Q And you didn't have all of the travel costs and everything
24 associated like that with it.

10:56:19 25 So how did you find the costs of the medical care

DIRECT EXAMINATION - LORA WHITE

10:56:22 1 associated with an open procedure in Atlanta?

2 A Again, I called the billing office at Emory and gave them
3 the CPT codes and the DRG, because with in-patient it's a
4 different kind of code, and I asked them.

10:56:37 5 Q And what was the total figure that you arrived at for an
6 open procedure?

7 A \$244,961. I did that one better.

8 Q Did I get that number right?

9 A Yeah.

10:56:58 10 Can I clarify one thing? With the in-patient
11 facility, I cleared that with the database that I use, FAIR
12 Health, which you can plug in the DRG and it will spit out the
13 average cost for a specific ZIP code.

14 Q All of this work was done using the normal methodology of
10:57:16 15 a life care planner?

16 A Yeah. You call, you get the information from the billers,
17 and then you compare it to the databases you have to make sure
18 you talked to somebody who knew what they were doing, because
19 sometimes you get people who just make stuff up and so you
10:57:32 20 have to double-check everything.

21 Q And how do you double-check those figures?

22 A From the databases. So I go to the CPT fee book, I go to
23 the FAIR Health database, I go to the American Hospital
24 Directory, and I go to the Medicare website.

10:57:46 25 Q So you take what they tell you and you also kind of make

CROSS-EXAMINATION - LORA WHITE

10:57:49 1 sure they're reasonable under the databases you have access to
2 as a life care planner?

3 A That's correct. That's right.

4 Q Are all the opinions you've given today in this case to a
10:57:57 5 reasonable degree of life care planner probability?

6 A Yes.

7 MR. COMBS: Nothing further, Your Honor.

8 THE COURT: Cross-examination?

9 MS. HELM: Yes, Your Honor.

C R O S S - E X A M I N A T I O N

10:58:09 10 BY MS. HELM:

11
12 Q Morning, Ms. White. My name is Kate Helm. We've never
13 met before, have we?

14 A No, ma'am.

10:58:19 15 Q You spend -- or you derive approximately 90 percent of
16 your income doing litigation-related work; is that right?

17 A At least. Yes.

18 Q And you have done many, many cases with the
19 Gallagher & Kennedy firm, Mr. Combs' firm; is that right?

10:58:38 20 A I've done a few cases with him. I don't know what you
21 mean by "many, many." Sounds like hundreds, but I haven't.

22 Q But you've definitely been retained by them before?

23 A Yes.

24 Q On more than one occasion?

10:58:48 25 A Yes.

CROSS-EXAMINATION - LORA WHITE

10:58:54 1 Q You testified earlier that what you're here for is to
2 figure out the future medical care Ms. Jones will need and how
3 much it will cost; right?

4 A Yes.

10:59:01 5 Q You actually didn't make any determination about what
6 future medical care she will need, did you?

7 A No. This came straight from the doctors.

8 Q Came from the hired consultants hired by
9 Gallagher & Kennedy; correct?

10:59:11 10 A Correct.

11 Q You did not speak to any of her treating physicians, did
12 you?

13 A No.

14 Q You didn't ask to speak to any of her treating physicians,
10:59:19 15 did you?

16 A No.

17 Q And are you aware that none of Mrs. Jones' treating
18 physicians have recommended either of the procedures that you
19 costed out?

10:59:27 20 A I don't know because I didn't talk to them.

21 Q Did you ask to talk to them?

22 A No.

23 Q You simply relied on conversations with Dr. Hurst and
24 Dr. Muehrcke; correct?

10:59:35 25 A That's right.

CROSS-EXAMINATION - LORA WHITE

10:59:37 1 Q Are you aware that neither Dr. Hurst nor Dr. Muehrcke have
2 ever treated or evaluated Ms. Jones in person?

3 A Yes.

4 Q So what you did in this case is you had Dr. Hurst tell you
10:59:58 5 she should go to Stanford, so you chose Stanford based on that
6 and you cost projected it for a percutaneous procedure in
7 Stanford; right?

8 A Right.

9 Q You did not look at the possibility that could be done in
11:00:09 10 Savannah, Georgia, did you?

11 A They already tried it.

12 Q It's your testimony they already tried to retrieve the
13 strut in Savannah, Georgia?

14 A Somewhere locally. They couldn't get it, so --

11:00:22 15 Q Who told you that?

16 A I can't remember, I'm sorry.

17 Q So if you're wrong and they have not tried to
18 percutaneously retrieve the strut, you were given wrong
19 information; correct?

11:00:33 20 A About that, yes.

21 Q So you did not look at options to retrieve the strut in
22 Savannah, Georgia, did you?

23 A No, because Dr. Muehrcke specifically said to try Dr. Kuo
24 because of his experience and expertise.

11:00:46 25 Q And you didn't look at any options on the east coast at

CROSS-EXAMINATION - LORA WHITE

11:00:49 1 all, did you?

2 A No. I could have gone -- I think I could have gone to the
3 University of Pennsylvania, but the costs would have been
4 similar.

11:00:54 5 Q But you didn't do that?

6 A No.

7 Q And are you aware, are you not, and in fact you recorded
8 in your report that Dr. Muehrcke specifically recommends
9 against an open procedure?

11:01:07 10 A I'm sorry, I didn't understand your question.

11 Q Dr. Muehrcke, who you talked to; right?

12 A Right.

13 Q He specifically recommends against an open procedure for
14 Ms. Jones. Are you aware of that?

11:01:17 15 A I know he said he wanted to do the percutaneous -- he
16 thought the percutaneous would be the first option to try, and
17 if that failed they would have to go to the open procedure.

18 Q So it's your testimony that Dr. Muehrcke said they would
19 have to do an open procedure?

11:01:31 20 A No, that's not what I said. What I said was the doctors
21 said that they would try the percutaneous procedure first, and
22 then if that failed then they would do the open procedure.

23 Q And you costed the open procedure in Emory based on that
24 understanding; correct?

11:01:46 25 A That's right.

REDIRECT EXAMINATION - LORA WHITE

11:01:47 1 Q So if Dr. Muehrcke has testified to this jury this week or
2 last week that he recommends against an open procedure, that
3 cost would not be necessary, would it?

4 A It depends what Dr. Hurst says.

11:01:58 5 Q Well, if they both say there's no need -- they recommend
6 against an open procedure, that cost would not be necessary,
7 would it?

8 A Yes, but I would want to talk to them before I took it out
9 of my report because they told me something --

11:02:12 10 Q But you did, in fact, include in your report Dr. Muehrcke
11 said an open procedure would be too risky, didn't you?

12 A Yes.

13 MS. HELM: Thank you. No further questions.

14 THE COURT: Redirect?

R E D I R E C T E X A M I N A T I O N

11:19:09 15 BY MR. COMBS:

16
17 Q Ms. White, you were asked about your litigation work.
18 About how much of your work is on the plaintiff side and how
19 much is on the defense side?

11:02:41 20 A It's 50/50. I'm hired by defense as much as plaintiff.

21 Q In fact, you've had defense cases against my firm;
22 correct?

23 A Yes.

24 Q Recently?

11:02:50 25 A Yes.

REDIRECT EXAMINATION - LORA WHITE

11:02:51 1 Q And you've done work for other law firms in Arizona,
2 including Snell & Wilmer; correct?

3 A That's correct.

4 Q And Snell & Wilmer is one of the defense firms involved in
11:03:00 5 this case; right?

6 A They're national. Yes. I've worked with them in other
7 areas too.

8 Q You haven't reviewed Ms. Jones' medical records in this
9 case?

11:03:13 10 A No.

11 Q And for the explant procedure, it was taken out, the
12 filter was removed.

13 A I'm sorry?

14 Q You haven't reviewed the medical records, for example, of
11:03:23 15 the filter that was -- the removal of the filter?

16 A No.

17 Q Or when the filter -- regarding the filter fragment, you
18 haven't reviewed imaging or anything like that?

19 A That's right.

11:03:34 20 Q You just know that there's a filter piece still left in
21 her.

22 A Yes.

23 Q That's what the doctors told you?

24 A That's correct.

11:03:43 25 Q So as far as whether they tried to take it out or couldn't

REDIRECT EXAMINATION - LORA WHITE

11:03:47 1 or it was left in or they didn't -- they left it alone, you
2 don't know that?

3 A I don't. I just know what I've been told.

4 Q Why don't you -- why don't you -- let me ask it this way:
11:03:59 5 Do you typically call the treating physicians in cases like
6 this?

7 A No. This wasn't -- like I said, when you do a life care
8 plan, which you're outlining all of the medical costs, you
9 want to talk to all of the doctors, you want to read all the
11:04:13 10 medical records. All I was asked in this case to do -- we
11 knew there was a filter fragment in her body that needed to
12 come out, so all I was asked to do was to price how much that
13 would be. That's all I did.

14 So this wasn't a true life care plan, it was just a
11:04:27 15 simple evaluation, talk to the doctors, get their
16 recommendations, find out how much that's going to be, because
17 doctors don't know how much they bill.

18 MR. COMBS: Nothing further, Your Honor.

19 THE COURT: All right. Thank you.

11:04:40 20 You can step down.

21 THE WITNESS: Thank you.

22 MR. CLARK: At this time the plaintiff would call
23 Abithal Raji-Kubba via video deposition, and would move into
24 evidence the following exhibits: 1817, 1821, 1823.

11:05:11 25 MS. HELM: Your Honor --

REDIRECT EXAMINATION - LORA WHITE

11:05:11 1 I'll do it later. I've got it.

2 -- there's an exhibit the defendants also need to
3 move in, but I apologize, I can't get my --

4 MR. CLARK: I can tell you what that is. But I will
11:05:24 5 represent that you had agreed those three exhibits --

6 MS. HELM: I'm sorry. Yeah, no objections.

7 THE COURT: Okay. Those are admitted.

8 (Exhibits 1817, 1821, 1823 admitted.)

9 MR. CLARK: And I believe the defendant has a motion
11:05:31 10 to admit Exhibit 1822.

11 MS. HELM: Your Honor, we would move to admit 1822.

12 THE COURT: That will be admitted as well.

13 MR. CLARK: And for the record, we have no objection
14 to that.

11:05:40 15 THE COURT: That was my assumption.

16 (Exhibit 1822 admitted.)

17 MR. CLARK: Your Honor, if I could -- because this
18 got a little tangled up, if I could just read the deposition
19 exhibit conversion to the jury for this particular one. And I
11:05:52 20 apologize for not having the handy cheat sheet.

21 THE COURT: That's fine.

22 MR. CLARK: Exhibit 1817 is deposition Exhibit 301.

23 Exhibit 1821 is deposition 305.

24 1823 is deposition 308.

11:06:10 25 And 1822 is deposition 307.

REDIRECT EXAMINATION - LORA WHITE

1 THE COURTROOM DEPUTY: Could he spell the name for
2 the jury.

3 THE COURT: Would you spell the name for the jury,
4 please.

5 MR. CLARK: Yes. The name of the witness?

6 THE COURT: Yes.

7 MR. CLARK: It is Abithal, A-B-T-I-H-A-L, Raji,
8 R-A-J-I, hyphen, Kubba, K-U-B-B-A.

9 May I be permitted to read the summary?

10 THE COURT: Yes.

11 MR. CLARK: Ms. Raji-Kubba was the vice president for
12 research and development at Bard Peripheral Vascular from
13 May 2007 until December 2011. She has a bachelor's degree in
14 engineering and specialized in material science. She has a
15 background working with semiconductors. Since 1993 she has
16 been working with medical devices, including implantable
17 devices such as ports, central lines, and IVC filters.

18 (Video testimony of Abithal Raji-Kubba played.)

19 MR. CLARK: Your Honor, the plaintiff would call
20 Natalie Wong, also via video deposition, and would offer the
21 following exhibits into evidence: 2243, 2247, 2249, 2250,
22 2251, and 2254.

23 And if I could just make a question. I believe 2248
24 and 2253 are already in evidence; is that correct?

25 THE COURTROOM DEPUTY: 2248 has been admitted.

REDIRECT EXAMINATION - LORA WHITE

11:25:45 1 And 2253?

2 MR. CLARK: Yes.

3 THE COURTROOM DEPUTY: Has been admitted.

4 MR. CLARK: Thank you.

11:25:50 5 THE COURT: Any objection?

6 MS. HELM: None, Your Honor.

7 THE COURT: All right, those exhibits are admitted.

8 (Exhibits 2243, 2247, 2249, 2250, 2251, and 2254

9 admitted.)

11:25:54 10 MR. CLARK: May I approach with the conversion chart?

11 THE COURT: You may.

12 MR. CLARK: And may I be permitted to read the

13 background summary?

14 THE COURT: Yes.

11:26:09 15 MR. CLARK: Natalie Wong is currently employed at

16 Bard Peripheral Vascular, and since 2008 has been a quality

17 engineering manager in field assurance. Ms. Wong earned a

18 bachelor's degree in industrial engineering in 2001 and a

19 master's in business administration in 2007 from Arizona State

11:26:26 20 University. She began working at BPV in April of 2002 as a

21 quality engineer and has been with the company since, with the

22 exception of a brief stint at Lockheed Martin in Georgia. At

23 BPV she handles quality assurance issues and conducts trending

24 analyses related to BPV's IVC filters.

11:27:00 25 (Video testimony of Natalie Wong played.)

REDIRECT EXAMINATION - LORA WHITE

11:27:08 1 THE COURT: Counsel, let's end the deposition there.
2 Ladies and gentlemen, we will resume at 1 o'clock.
3 We'll excuse you at this time.

4 (The jury exited the courtroom at 12:00.)

12:00:10 5 THE COURT: Please be seated.
6 So, Counsel, do you know how you're allocating time
7 on depositions for this morning?

8 MR. CLARK: We do, Your Honor.

9 For Dr. Nelson, plaintiff had 20 minutes and
12:00:28 10 defendant had 14 minutes.

11 For the portion of Dr. Chodos played so far, we're
12 splitting it three and three.

13 For Raji-Kubba, it's 13 to plaintiffs and five to
14 defendant.

12:00:43 15 THE COURT: Okay. And then there will be some for
16 Wong later.

17 MR. CLARK: Correct.

18 THE COURT: Okay. Give me just a minute here.

19 MR. CLARK: Your Honor, if you like, I can tell you
12:00:51 20 the remaining depositions so you have it? Would that be
21 helpful to you, to the Court?

22 THE COURT: Tell me what?

23 MR. CLARK: The remainder of the ones to be played.

24 THE COURT: No. It only helps after I've got the
12:01:00 25 time recorded.

12:01:04 1 MR. CLARK: No problem.

2 THE COURT: Let me just do this math.

3 All right. As of now, Counsel, plaintiff has used

4 21 hours and four minutes, defense has used six hours and

12:02:26 5 three minutes.

6 And we will see you at 1 o'clock.

7 (End of a.m. session transcript.)

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C E R T I F I C A T E

I, PATRICIA LYONS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 23rd day of May, 2018.

s/ Patricia Lyons, RMR, CRR
Official Court Reporter